

**COURT OF APPEALS
DECISION
DATED AND FILED**

April 24, 2018

Sheila T. Reiff
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2017AP2015

Cir. Ct. No. 2017SC028973

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

JAMES MORTON AND THERESA MORTON,

PLAINTIFFS-RESPONDENTS,

V.

CHARLES E. FERGUSON,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Milwaukee County: GLENN H. YAMAHIRO, Judge. *Affirmed.*

¶1 DUGAN, J.¹ Charles E. Ferguson appeals from a judgment of eviction. In his notice of appeal Ferguson asserts that the chief judge of the circuit

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(a) (2015-16). All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

court failed to honor his request for substitution of the Honorable William Pocan, and that there was fraudulent conduct between Judge Pocan and the Honorable Glenn Yamahiro, who granted the judgment of eviction. In his appellate brief, he also references his counterclaim.

¶2 We affirm.

BACKGROUND

¶3 James and Theresa Morton (the “Mortons”) filed a small claims eviction action against Ferguson on September 15, 2017. On September 18, 2018, Ferguson filed a “[c]ounterclaim-cross complaint.” On the return date, September 28, 2017, both parties appeared pro se before the court commissioner, Ferguson filed an answer to the complaint, and the case was transferred to Judge Pocan for an eviction trial on October 3, 2017, at two o’clock p.m.²

¶4 On September 29, 2017, Ferguson filed a request for substitution of Judge Pocan. On October 3, 2017, Chief Judge Maxine White, signed an order transferring the case to the Honorable Glenn Yamahiro. Notice of the transfer was sent to the parties by the Clerk of Court’s office on October 3, 2017. On October 3, 2017, the Mortons appeared before Judge Yamahiro and Ferguson appeared in Judge Pocan’s court at two o’clock p.m., and was instructed that the case had been transferred to Judge Yamahiro. However, Ferguson never appeared in Judge Yamahiro’s court. The case was not heard by Judge Yamahiro until four o’clock p.m. that day. The trial court granted a default judgment of eviction in favor of the Mortons and a writ of restitution of premises, with costs and disbursements.

² Judge Pocan was the assigned small claims judge for Milwaukee County Circuit Court.

¶5 On October 6, 2017, Ferguson filed a motion to reopen and vacate the judgment of eviction. In the motion, Ferguson asserted that the judgment of eviction must be vacated because the Clerk of Court's office failed to "process Substitution Procedures."

¶6 The case was set for a hearing on October 11, 2017, before Judge Yamahiro. The trial court also stayed the writ of restitution until the hearing date.

¶7 At the hearing on October 11, 2017, the Mortons appeared by telephone and Ferguson appeared in person. The trial court attempted to swear the parties, but Ferguson refused to take the oath and left the courtroom during the hearing. The trial court then denied Ferguson's motion to reopen for reasons stated on the record and lifted the stay on the writ of restitution.

¶8 Ferguson filed a notice of appeal on October 11, 2017. His notice of appeal states that "NO transcript will be ordered." By order dated December 18, 2017, this court rejected Ferguson's brief because it did not comply with the Rules of Appellate Procedure. Ferguson filed a second brief, but this court again, by order dated January 5, 2018, rejected the brief stating, "[t]his brief, like the previous brief, does not contain a cogent legal argument supported by reference to appropriate legal authorities. It does not contain adequate citations to the record." This court accepted Ferguson's brief on February 19, 2018. Ferguson represents himself on appeal.

DISCUSSION

¶9 As construed by this court, Ferguson argues that Judge Yamahiro did not have jurisdiction to entertain this case because the chief judge failed to honor his request for substitution of Judge Pocan. However, Ferguson fails to cite to the

record to support his assertion. Moreover, the record reflects that the chief judge did honor his request for substitution. The record reflects that in response to his request for substitution of judge, Chief Judge White signed an order transferring the case from Judge Pocan to Judge Yamahiro.

¶10 When Ferguson appeared in Judge Pocan's court on October 3, 2017, the day the case was set for trial, he was instructed that the case had been reassigned to Judge Yamahiro, Branch 34. However, Ferguson chose not to go to Judge Yamahiro's courtroom. When Ferguson did not appear in court, Judge Yamahiro granted a default judgment of eviction. Ferguson neither cites any legal authority to support his argument that Judge Yamahiro did not have jurisdiction to hear the case, nor does he develop the argument. In short, Ferguson has done no more than to state the proposition, without any elaboration. He has not developed or presented an argument telling us why we should accept his conclusory proposition and he has not referred us to any legal authority supporting the statement. We need not address undeveloped arguments. *See State v. Pettit*, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992).

¶11 Moreover, based on the record, the chief judge properly transferred the case to Judge Yamahiro when Ferguson filed a substitution against Judge Pocan. When Ferguson failed to appear before Judge Yamahiro on October 3,

2017, the trial court properly granted a default judgment. *See* WIS. STAT. § 806.02(5).³

¶12 Ferguson also argues that “[h]owever a Substitution Motion was filed but case was not continued in small claims Court, when P.J., Pocan became disqualified [sic], the Chief Judge cannot assign a new Judge from a different Circuit.” Again, this assertion is not accompanied by citation to any legal authority for the proposition, nor does he develop the argument. We need not address undeveloped arguments. *See Pettit*, 171 Wis. 2d at 646-47.

¶13 Lastly, Ferguson makes reference to his counterclaim. However, he fails to state a cogent legal argument supported by appropriate legal authority and citation to the record. As noted, we need not address undeveloped arguments. Moreover, the record does not reflect the status of his counterclaim. The record reflects that Judge Yamahiro granted the default judgment of eviction and issued a writ of restitution. It also reflects that the “2nd and 3rd causes of action dismissed.”⁴ Judge Yamahiro did not take any action regarding Ferguson’s

³ To the extent that Ferguson is challenging the trial court’s order granting judgment of eviction on any grounds other than lack of jurisdiction, he has failed to provide any transcripts of the small claims court proceedings, and we must assume that they would support the trial court’s decision. *See State v. Provo*, 2004 WI App 97, ¶19, 272 Wis. 2d 837, 681 N.W.2d 272 (stating that it is the appellant’s responsibility to ensure that the record is complete, and we are to assume that any missing transcripts would support the trial court’s decision); *see also Haack v. Haack*, 149 Wis. 2d 243, 247, 440 N.W.2d 794 (Ct. App. 1989) (stating that when transcripts are missing, we must assume that every fact essential to sustain the trial court’s decision is supported by the record).

⁴ The complaint in this case is a standard form small claims complaint that includes a “Second Cause of Action” that includes a claim for rent due and damages to the property. Historically, the trial court in Milwaukee County refers to the cause of action as “2nd and 3rd causes of action.” In this case, the Mortons were not claiming any amounts for rent due or damage to the property.

counterclaim. The status of the counterclaim is not clear, but the issue is not before this court—no order addressing the counterclaim is before us.⁵

CONCLUSION

¶14 For the reasons set forth above, we affirm the trial court’s judgment of eviction.

By the Court.—Judgment affirmed.

This opinion will not be published. See WIS. STAT. RULE § 809.23(1)(b)4.

⁵ We have reviewed Ferguson’s notice of appeal and it does not state that he is appealing the trial court’s order denying his motion to reopen.

